extraordinary that the plaintiff should have been allowed to leave the prison and check into a hotel, indeed at his own cost, to remain overnight and to be taken to the place of his future residence only the next day. The plaintiff was released from the prison at 4.50pm. To my mind it fell within the bounds of the time factor ruled on above for the plaintiff to be released from Taiping prison not at 4.50 in the afternoon but early the next day at such a time as he could have been conveniently conveyed from Taiping to Tangkak.

Accordingly, I find that by reason of the plaintiff's detention at the police station at Asam Kumbang, Taiping from 21 October 1988 to 25 October 1988 and his being allowed upon his release from the Taiping prison on 21 November 1988 to stay at the hotel overnight, the order made on 21 November 1988 is vitiated and consequently the plaintiff's restriction in Tangkak is unlawful.

Application allowed.

Solicitors: *Gunaretnam & Co.*

Reported by *Mathavan Devadas*

Cayman Development (Kedah) Sdn Bhd v Puah Kiew & Ors

HIGH COURT (KEDAH) — ORIGINATING SUMMONS NO 24-377-90
KC VOHRAH J
11 APRIL 1990

Civil Procedure — Injunction — Court can grant injunction even if it gives whole remedy before action tried — Failure to disclose material fact — Liability for damages

Landlord and Tenant — Option to renew — Failure to exercise option until after expiration — Compliance with exact terms of option in order to bind grantor — Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, s 7(2)

The plaintiff obtained an injunction restraining the six defendants from entering, trespassing upon, cultivating or in any way interfering with the land comprised in SP 25559 lot 473 mukim Tajar District of Kota Setar, State of Kedah ('the land'). The plaintiff was the beneficial owner of the land for which the six tenancies for padi cultivation had not been renewed under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 ('the Act') when they expired in February 1989. No notice to exercise the option to renew was given and the defendants had ceased to pay rentals. There has since been an approved change in the use of the land by the authorities.

The first, fourth, fifth and sixth defendants then applied to set aside the injunction. The court then became aware of the fact that each of them separately had and occupied a house in the land and the houses were also occupied by their family members.

Held, varying the injunction:

(1) The option to renew the tenancy agreements was to be exercised two months before the expiry of the tenancy agreements. The defendants did not exercise the option till after the expiry of the tenancy agreements. An option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with. As the tenancy agreements had expired, and they had not been renewed, there are no subsisting tenancy agreements between the defendants and the plaintiff.

(2) It seems clear that the defendants do not now have a right to cultivate the areas of the land which were the subject matter in the expired tenancy agreements. They ceased to have a right to cultivate their padi land with padi, and it seems clear that the plaintiff has a clear right to exclude the defendants from entering, trespassing upon and cultivating the padi land which previously were allotted to the defendants.

(3) An injunction may be granted even if it would give the plaintiff the whole remedy before the action is tried where plainly there is no defence to the action and the only object in raising the defence is to cause delay.

(4) From the definition of 'padi land' and 'tenant' under s 2 of the Act, the tenancy agreements of the six defendants, 'tenants' under the Act, could only have been in respect of 'padi land' and could not have included any area occupied by their homes. As there was no material before the court on which to determine what legal or equitable rights exist in respect of the areas where the houses of the first, fourth, fifth and sixth defendants stand, and the matter was not addressed by the parties, the injunction granted would not be in respect of the areas on which stand the houses of the defendants.

(5) The plaintiff should have disclosed the matter of the houses on the land when first applying for the injunction. The first, fourth, fifth and sixth defendants are entitled to have access to their houses and the plaintiff shall pay them damages which shall be assessed.

Cases referred to

1 *Bayly* v *Leominster Corp* (1792) 1 Ves Jun 476; 30 ER 446 (refd)
2 *Teo Siew Peng* v *Guok Sing Ong & Anor* [1983] 1 MLJ 132 (folld)
3 *Ismail* v *Haji Taib* [1972] 1 MLJ 259 (refd)
4 *Manchester Corp* v *Connolly* [1970] 1 All ER 961 (folld)
5 *Lee Ying Piew & Ors* v *MP Tan Electrical & Credit Sdn Bhd* [1989] 3 MLJ 228 (folld)

Legislation referred to

Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 ss 2, 5, 7(2)

Chong Siew Ean (Ms) for the plaintiff.
George John for the first, fourth, fifth and sixth defendants.

Cur Adv Vult

KC Vohrah J: On 11 March 1990, I granted to the plaintiff an injunction restraining, briefly stated, the six defendants from entering, trespassing upon, cultivating or in any way interfering with the land comprised in SP 25559, lot 473, mukim Tajar, District of Kota Setar, State of Kedah. The injunction also restrained the six defendants from preparing the land for the planting of padi or any crops. I allowed the

defendants liberty to apply to set aside the order within two weeks from service of the order on them.

In granting the injunction I relied on the affidavit filed by Kang Phee Keat, the director of the plaintiff company, that the plaintiff was the beneficial owner of the land for which six tenancies for padi cultivation had not been renewed as required under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 when they expired on February 1989; there was no notice to exercise the option to renew as required under s 7(2) of the Act; and the six defendants whose six tenancies had expired had ceased to pay rental to the owners. The plaintiff had had the land approved by the State Authority for conversion from agricultural to 'housing and business buildings' and could not start development as the defendants were still occupying the land.

I had, before granting the injunction, required proof of the alleged expired tenancies of the defendants under the Act. Copies of these tenancies were exhibited in the second affidavit of Kang Phee Keat sworn on 11 March 1990.

The first, fourth, fifth and sixth defendants applied to set aside the injunction. For the first time the court became aware of a vital fact— that each of them separately had and occupied a house in the said land and the houses were also occupied by their family members. I reserved decision on the main issue but varied the injunction to allow the defendants access to their homes in the land.

Although the tenancies of the defendants had expired on 16 February 1989, cl 17 of the agreement between the plaintiff and the owners of the land made about two months later, ie on 25 April 1989, specified that the sale of the land 'is subject to the existing tenancy and the vendor shall not be required to surrender vacant possession to the purchaser'. The defendants assert that the clause shows that their tenancies with the legal owners of the land continue to subsist. But the affidavits of the defendants, however, show that they called on an officer appointed under the Act, the Penolong Pegawai Pengaduan Akta Penanam Padi, Alor Setar only after the expiry of their tenancies to inform the officer concerned that they had decided to exercise the option to renew the said tenancy agreements. The officer concerned sent letters on their behalf requesting the owners to renew the tenancies but there was no response from the owners.

Section 7(2) of the Act states:

> An option to renew a tenancy agreement shall be exercised not later than two months before the expiry of the tenancy agreement by the tenant filing a notice with the Registrar in the form prescribed ... or in such form as to show an intention to renew the agreement.

The option to renew a tenancy agreement (and a tenancy agreement under the Act relates to the land which is for the cultivation of padi and does not include the area occupied by a building site, see s 2) must be exercised not later than two months before the expiry of the tenancy agreement but on the admission of the first, fourth, fifth and sixth defendants they did not exercise the option in the prescribed manner; they merely went to see an officer constituted under the Act to state that they wanted to renew the option and this was after the expiry of their tenancy agreements.

The law on contractual options seems clear enough. Where a covenant requires that the tenant shall give notice of his intention to take a renewal before the determination of the term, and, when this is the case, he will lose his right if he fails to give the notice in time: *Bayly* v *Leominster Corp.*[1] An option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with: *Teo Siew Peng* v *Guok Sing Ong & Anor.*[2]

In our case, the option given to the tenant for a renewal of a tenancy agreement is a contractual term which is statutorily prescribed under s 7(2) of the Act and if not exercised on time as prescribed cannot bind the landlord. An option to renew a tenancy agreement shall be exercised not later than two months before the expiry of the tenancy agreement and this was not done in respect of all the six tenancy agreements in the case. Thus the tenancy agreements have expired and they have not been renewed and there are no subsisting tenancy agreements between the six defendants and the owners of the land or their successors.

Admittedly if the owners had waived the notice required under s 7(2) of the Act, the tenancies could have been renewed but it is clear the owners did not do anything to contact the defendants on the matter and it is not disputed that no rent was paid by the defendants.

The Federal Court case of *Ismail* v *Haji Taib*[3] was cited as showing that the Act does not render illegal a tenancy agreement not in writing or not registered under the Act. But here it is clear there was no renewal of the tenancy agreement under the Act and no question about oral agreements in respect of the renewals arises.

It is argued that s 5 of the Act which provides that registration of the tenancy agreement shall be notice to all persons including purchasers of the padi land and chargees, assignees and successors in title of the landlord of the incumbrance of the padi land held under such tenancy is applicable but with respect I cannot see how that can be so where there are no subsisting tenancy agreements in respect of the six defendants.

It seems clear that the defendants do not now have a right to cultivate the areas of the land which were the subject matters in the expired tenancy agreements. Their

expired tenancies under the Act allowed them to cultivate their 'padi land' with padi. After the expiry of their tenancies agreements, there being no renewal thereof, they ceased to have a right to cultivate their padi land with padi. And it seems to me clear that the plaintiff has a clear right now subsisting to exclude the defendants from entering, trespassing upon and cultivating the padi land which previously were alloted to the defendants under the tenancy agreements.

In *Manchester Corp* v *Connolly*,[4] (see also *Lee Ying Piew & Ors* v *MP Tan Electrical & Credit Sdn Bhd*[5]), it was held that an injunction may be granted even if it would give the plaintiff the whole remedy before the action is tried where plainly there is no defence to the action and the only object in raising the defence is to cause delay. Here in the instant case there is plainly no defence in so far as the areas of land alloted to the defendants in their now expired tenancy agreements for padi cultivation are concerned and it seems to me the object in raising the defence is to obtain compensation from the plaintiff for vacating the padi land for the first, fourth, fifth and sixth defendants have readily admitted in their affidavits that there were steps taken to settle the matter relating to the possession of their land and that no settlement had been reached regarding their 'rights of cultivating the said land'.

As was previously stated, the court was unaware that the four defendants who applied to have the injunctions set aside had homes located in the land. It is not clear whether their homes stand outside the area alloted to them for padi cultivation or within. If they stand within the previously alloted areas the homes were not caught within the tenancy agreements done under the provisions of the Act. Section 2 defines a tenancy agreement as 'any agreement whereby a landlord agrees to let and a tenant agrees to take any *padi land* for the purpose of cultivating padi and includes any agreement whereby any person agrees to work on any padi land for payment of a share of the crop or any consideration in lieu thereof' (emphasis mine).

The expression 'padi land' mentioned in the definition in s 2 is defined as 'land or any portion of land the purpose of which is for the cultivation of padi or on which padi is cultivated *excluding any area occupied by a building site or other land*' (emphasis mine). And 'tenant' under s 2 of the Act 'means the tenant of any padi land comprised in a tenancy agreement'.

From the foregoing, the 'tenancy agreements' of the six defendants, 'tenants' under the Act, could only have been in respect of 'padi land' and could not have included any area occupied by their homes.

There is no material upon which the court can rely to determine what legal or equitable rights exist in respect of the areas where the homes of the first, fourth, fifth and sixth defendants stand. With respect it was not appreciated by all parties to the action that the areas were not, by operation of law, included in the land comprised in the expired tenancy agreements and so the matter was not addressed.

Thus the injunction that the court can grant and does grant is in respect of the 'padi land' areas which were the subject matter of the six expired tenancy agreements and not in respect of the areas on which stand the homes of the defendants.

The matter of the 'homes' in the land should have been disclosed when the plaintiff first applied for an injunction. The first, fourth, fifth and sixth defendants were entitled to have access to their homes and the plaintiff shall pay them damages which shall be assessed by the senior assistant registrar on a date to be fixed.

There shall be no order as to costs.

Order accordingly.

Solicitors: *Hoe & Ahmad Zaki; George John & Co.*

Reported by *Yap Shao Sin*

National Union of Employees in Companies Manufacturing Rubber Products v Director General for Industrial Relations & Anor

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24-820-89
WAN ADNAN J
3 APRIL 1990

Labour Law — Trade unions — Recognition under Industrial Relations Act 1967 — Whether claim resolved — Industrial Relations Act 1967, ss 9 & 12

Statutory Interpretation — Relevance of marginal note — Ambiguity of statute — Reference to Bill

Words and Phrases — 'Resolved' — Industrial Relations Act 1967, s 12

The plaintiffs served a claim for recognition on the second defendants on 1 April 1988. The second defendants referred the matter to the first defendant. The plaintiffs then reported the matter to the first defendant who, pursuant to s 9 of the Industrial Relations Act 1967 ('the Act'), started to make inquiries. On 18 May 1989 the plaintiffs withdrew their claim for recognition. Then on 5 June 1989 the plaintiffs served a new claim for recognition on the second defendants with a copy to the first defendant. They were told that by virtue of s 12 of the Act they could not submit another claim until six months after 18 May 1989. The plaintiffs applied for a declaration, inter alia, that the rejection was incorrect.